

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING  
& POSTPONED SUBDIVISION ITEMS**

**November 18, 2010**

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Carla Blanton (left at 5:44 p.m.); Patrick Brewer; Mike Cravens; Mike Owens; Derek Paulsen (left at 5:42 p.m.); Carolyn Richardson, Chair; Lynn Roche-Phillips (left at 5:10 p.m.); and William Wilson. Absent were Marie Copeland and Ed Holmes.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jim Marx; Traci Wade; Tom Martin; Chris Taylor; Stephanie Cunningham; and Kenzie Gleason. Other staff members present were Rochelle Boland, Department of Law; Tim Queary, Urban Forester; Bob Carpenter, Division of Building Inspection; Captain Charles Bowen, Division of Fire and Emergency Services; Steve Parker, Division of Engineering; and Jeff Neal, Division of Traffic Engineering.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 9-0 (Copeland and Holmes absent) to approve the minutes of the October 28, 2010, meeting.

- III. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, November 4, 2010, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Eunice Beatty and Derek Paulsen. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor and Denice Bullock, as well as Captain Charles Bowen, and Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Boland, Law Department; Annette Cook and Paul Hockensmith, Addressing Office; and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

*General Notes*

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

**A. FINAL SUBDIVISION PLANS**

1. **PLAN 2010-119F: CLARK PROPERTY, UNIT 2-C (1/2/11)\*** - located at 3335 Polo Club Boulevard (a portion of).  
(Council District 12) **(EA Partners)**

Note: The Planning Commission postponed this plan at their November 11, 2010 meeting.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
  2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping and required street tree information.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree protection area(s).
  6. Department of Environmental Quality's approval of environmentally sensitive areas.
  7. Greenspace Planner's approval of the treatment of greenways and greenspace.
  8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
  9. Addition of exaction information to the approval of the Division of Planning.
  10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
  11. Resolve pedestrian access easement cross-section and easement fencing.
2. **PLAN 2010-120F: CLARK PROPERTY, UNIT 2-D (1/2/11)\*** - located at 3335 Polo Club Boulevard (a portion of).  
(Council District 12) **(EA Partners)**

Note: The Planning Commission postponed this plan at their November 11, 2010 meeting.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

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\* - Denotes date by which Commission must either approve or disapprove request.

2. Urban County Traffic Engineer's approval of street cross-sections and access.
  3. Building Inspection's approval of landscaping and required street tree information.
  4. Addressing Office's approval of street names and addresses.
  5. Urban Forester's approval of tree protection area(s).
  6. Department of Environmental Quality's approval of environmentally sensitive areas.
  7. Greenspace Planner's approval of the treatment of greenways and greenspace.
  8. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
  9. Addition of exaction information to the approval of the Division of Planning.
  10. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
  11. Resolve pedestrian access easement cross-section and easement fencing.
3. PLAN 2010-121F: CLARK PROPERTY, UNIT 2-E (1/2/11)\* - located at 3335 Polo Club Boulevard (a portion of).  
(Council District 12) **(EA Partners)**

Note: The Planning Commission postponed this plan at their November 11, 2010 meeting.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
8. Denote the location and number of trees to be planted in order to meet the tree canopy requirements.
9. Addition of exaction information to the approval of the Division of Planning.
10. Resolve pedestrian access easement cross-section and easement fencing.

Staff Presentation: Mr. Sallee stated that the staff was prepared to present PLAN 2010-119F, PLAN 2010-120F, and PLAN 2010-121F together. He noted that these plats all share an address as a portion of 3335 Polo Club Boulevard, and they were all postponed at the Commission's meeting last week. The property is located east of Interstate 75, south of the interchange with Man O' War Boulevard; and east of Polo Club Boulevard, which is a major collector street that parallels the Interstate in this area. To the north of the subject property is the Gleneagles subdivision and the Blackford property development. The subject property is part of the larger Clark property. Also in the general vicinity is the Brighton Rails-to-Trails project, which is proposed to extend to the east, from its current terminus, to Polo Club Boulevard.

Mr. Sallee stated that, at the Commission's last meeting, the staff asked that these three items be postponed for one week, because they were pulled from the consent agenda in order to discuss pedestrian access easements. He used a copy of the rendered development plan/preliminary subdivision plan that was approved a year ago for the subject property to denote the location of the subject plats, and Falling Leaves Lane, which is a new loop street in the area. At the time of the Subdivision Committee's review of this plan in late 2009, there was a great deal of discussion about two issues: a possible street stub to the south and east of the subject property, and an area of tree preservation along the eastern border of the property. The Commission eliminated the street stub issue through its Subdivision Committee review process; but, in lieu of that stub, indicated the need for two pedestrian connections to the property further to the east. That property has not yet been proposed for a subdivision or development plan, but it is currently zoned EAR-2. The staff expects that, at some point, there will be a proposal for similar, single-family development of that area.

Mr. Sallee said that, at the Commission's meeting last week, the staff discovered that the representative of the Division of Police had some concerns about the design of the pedestrian access easements. The staff has since met with the applicant to discuss this issue. The staff is interested in establishing good pedestrian connections into the greenway system. The greenways that are anticipated in the area are proposed to be located in the western part of Unit 2, the plats for which have been approved by the Commission.

Mr. Sallee displayed a rendering of the staff's suggested new lotting configuration for a total of four lots on the Unit 2-E plat. HE said that they would like for the applicant to revise in order to facilitate a better pedestrian connection. He referred to the staff's revised recommendation, copies of which had been distributed to the Commission, and noted that the staff had addressed recommended re-lotting in proposed condition #11. The staff is recommending that the applicant extend either an easement or a non-buildable area to allow for greater separation between the homes so that the pedestrian accessway will have more room. Given the narrow width of the two lots immediately adjacent to the unapproved area of development, the staff is agreeable to not requiring a mid-block pedestrian connection, as long as an improved and augmented connection to the greenway is provided further down the street (Falling Leaves Lane).

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Mr. Sallee stated that the staff is proposing an amendment to condition #11 on the Unit 2-C and 2-D plats, so that the access easement can be removed. On the Unit 2-E plat, the staff is suggesting a condition to require that the style of fencing along the pedestrian access be reviewed by the Division of Police, and that a new condition be added to require that two lots be re-oriented, and that a non-buildable area or easement is added to portions of two of those lots. With those revisions, the staff is prepared to recommend approval of these three plats.

Commission Questions: Mr. Owens asked why this issue was brought up at this point in the process, when the plans have already been through Technical and Subdivision Committee reviews twice. Mr. Sallee answered that the staff was first made aware of the issue at the Commission's Subdivision Committee meeting two weeks ago. He said he was not sure if the Division of Police had been represented at the Technical Committee meeting one week prior to that meeting. Previously, the access easements had been decided upon after the meeting of the Subdivision Committee. Mr. Owens asked if the plan had been sent back to the Technical Committee for an additional review, and why the Division of Police might not have been represented at the Technical Committee meeting. Mr. Sallee responded that the Division of Police staff had been present at many Technical Committee meetings, but he was not sure if they were present at the latest meeting few weeks ago.

Mr. Paulsen commented that Lieutenant Gregg Jones, the Division of Police staff member for the Technical Committee, was present at the last meeting and made some comments on these plans. He was not a member of the committee when these development plans were originally approved in 2009.

Mr. Owens stated that the process needed to be improved so that issues such as these are caught earlier. Mr. Sallee noted that Lieutenant Jones had attended the new Planning Commission member orientation session a few weeks ago, and he is now more aware of the many activities of the various Division of Planning meetings.

Applicant Representation: Richard Murphy, attorney, was present representing the petitioner. He stated that the petitioner had taken the opportunity provided by the one-week postponement to meet with the staff and the Division of Police. The petitioner is in agreement with the staff's revised recommendations, including the proposed lotting configuration. Mr. Murphy noted that it would be preferable to note the areas as non-buildable, rather than easements, because that would clarify that the homeowners would need to mow those areas, rather than LFUCG.

Citizen Comments: There were no citizens present to comment on this item.

Action: A motion was made by Mr. Cravens, seconded by Mr. Brewer, and carried 9-0 (Copeland and Holmes absent) to approve PLAN 2010-119F, PLAN 2010-120F, and PLAN 2010-121F, subject to the revised conditions as listed on the staff's revised recommendation.

## **B. DEVELOPMENT PLANS**

1. DP 2010-46: L.T. RUTH PROPERTY (AMD) (11/11/10)\* - located at 1301 and 1351 Newtown Pike.  
(Council District 2) **(Vision Engineering)**

Note: The Planning Commission postponed this plan at their September 9, October 14, and November 11, 2010 meetings. The purpose of this amendment is to depict additional development of a 60,000 square-foot building and the associated parking.

The Subdivision Committee Recommended: **Postponement.** There were questions regarding the timing of the permanent access and development in the floodplain area.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm sewer, sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Correct Planning Commission certification.
12. Revise purpose of amendment note.

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13. Denote typical parking dimensions.
14. Correct note number 10.
15. Clarify existing development information.
16. Denote source of floodplain information.
17. Denote construction access location(s).
18. Denote tree protection areas.
19. Discuss status of future drive connection and temporary connection.
20. Discuss status of Newtown Pike access.
21. Discuss internal pedestrian connections.
22. Discuss proposed access through Eastern State Hospital property.

Staff Presentation: Mr. Taylor presented the amended final development plan, briefly orienting the Commission to the location of the property outside of New Circle Road on Newtown Pike, near its intersection with New Circle Road.

Mr. Taylor stated that the property currently has access via a narrow, one car-width driveway from Newtown Pike, and an access from Bull Lea Road through an adjacent property. The applicant is proposing to construct a new 60,000 square-foot building in the lower portion of the subject property, with the Fayette County Health Department expected to locate on the first floor of the building.

Mr. Taylor noted that the applicant proposes to close the existing one-lane access to Newtown Pike, and construct a new, right-in/right-out access, with a median control, across from an existing, similar access at the Newtown Springs development. There is approximately 1,895 linear feet of lot frontage for the subject property, so the staff was comfortable with the new proposed access along that frontage. The staff has met twice with the Division of Traffic Engineering, as well as with representatives of the Kentucky Department of Transportation, to work out the details of the proposed access. The staff's last communication with KYDOT staff indicated that the location of the current access does not meet their spacing requirements for a principal arterial.

Mr. Taylor said that the Subdivision Committee recommended postponement of this plan the last time it was before them. Following that meeting, the applicant submitted the current revised plan. Although there is still some work to be done with regard to the proposed new access, the staff, following their meetings with the Division of Traffic Engineering and KYDOT, is now recommending approval of this plan, with the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm sewer, sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. ~~Correct Planning Commission certification.~~ Kentucky Department of Transportation's approval of the proposed access to Newtown Pike.
12. ~~Revise purpose of amendment note.~~ Remove the building envelope along the Newtown Pike frontage (to maintain a minimum 62' setback).
- ~~13. Denote typical parking dimensions.~~
- ~~14. Correct note number 10.~~
- ~~15. Clarify existing development information.~~
- ~~13.16.~~ Denote source of floodplain information.
- ~~14.17.~~ Denote construction access location(s).
- ~~15.18.~~ Denote tree protection areas.
- ~~16.19.~~ Discuss status of future drive connection and temporary connection. Revise note #18 to add "at the time of Occupancy."
- ~~20. Discuss status of Newtown Pike access.~~
- ~~21. Discuss internal pedestrian connections.~~
- ~~22. Discuss proposed access through Eastern State Hospital property.~~

Mr. Taylor stated that condition #12 refers to the setback for the building envelope along Newtown Pike. The P-2 zone has a significantly larger setback than the P-1 zone, so the properties located along Citation Boulevard and throughout the remainder of the Coldstream campus have a deeper setback. The applicant's revised plan includes a 62-foot setback, which extends to the existing parking area at the rear of the building. The building envelope, however, would allow the building to be located much closer to the road. The staff is recommending that the applicant revise the building envelope in order to locate the building as closely as possible to the existing setbacks for the P-2 properties in the area. Mr. Taylor noted that

there are several standard clean-up conditions, as well as a condition relating to the timing of the closure of their existing access point to Newtown Pike.

Applicant Representation: Jihad Hallany, Vision Engineering, was present representing the applicant. He stated that the applicant is in agreement with the staff's recommendations.

Citizen Comments: There were no citizens present to comment on this item.

Action: A motion was made by Mr. Owens, seconded by Mr. Paulsen, and carried 9-0 (Copeland and Holmes absent) to approve DP 2010-46, subject to the staff's revised recommendations.

2. DP 2010-70: LEXINGTON PLAZA (AMD) (1/20/11)\* - located at 1549 North Limestone.  
(Council District 1) **(EA Partners)**

Note: The Planning Commission postponed this plan at their November 11, 2010 meeting. The purpose of this amendment is to depict additional development on the property.

The Subdivision Committee Recommended: **Postponement.** There are questions on the information from the previous plan governing the access points.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffer.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Include all information from previous development plan.
10. Addition of floodplain information.
11. Addition of proposed and existing easements.
12. Review by the Technical Committee prior to certification.
13. Discuss proposed access.
14. Discuss streetscape details relative to "Gateway Concept" outlined in the Central Sector Small Area Plan.

Staff Presentation: Mr. Martin presented the final development plan, briefly orienting the Commission to the location of the subject property at the northwest corner of New Circle Road and North Limestone Street intersection. He said that the subject property is in the vicinity of the intersection of North Broadway and New Circle Road to the west, with a new CVS store located to the east, and the Goo Goo Car Wash immediately adjacent to the subject property.

Mr. Martin stated that this development plan represents a small portion of the overall development plan for the property, which was originally called K-Mart Plaza. Goodwill and Windstream facilities are currently located in the former K-Mart building. Mr. Martin said that, when the applicant originally submitted the plan for this small portion of the property, the staff requested that the applicant provide information for the overall development plan, in order to gain perspective on the applicant's proposal. Staff recommended postponement of this plan at the Commission's meeting last week because it was a late file, and because of their concerns about the proposed access to the property. The applicant proposes to construct a 3,700 square-foot building on the property, along with seven parking spaces, in order to use the property for a vehicle sales establishment. The applicant proposes to use the front portion of the property, nearest New Circle Road, as a display area for vehicles.

Mr. Martin said that the staff recommended postponement of this plan in order to discuss the proposed access to the property, and the streetscape details relative to the North Limestone Street gateway concept included in the Central Sector Small Area Plan. Mr. Martin displayed a copy of the original development plan for the entire property, from 1964. That plan included two full access points to New Circle Road, as well as two full access points to North Limestone Street. When constructed, the two access points along New Circle were build a one way or right-in, right-out. With the filing of this amended development plan, the applicant is seeking to modify the two approved accesses to New Circle Road.

Mr. Martin displayed several aerial photographs of the overall site, noting all of the existing access points, the Goo Goo Car Wash facility, and the subject property. He said that the current New Circle Road access is right-in/right-out, and indicated the median that was newly constructed in this area of New Circle Road to provide access management. After this development plan was filed, staff met with the applicant and indicated that there was some concern about the functioning of the proposed access.

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With regard to the staff's concerns about the access situation on the overall development plan, Mr. Martin stated that, over time, access had developed contrary to what was included on the original 1964 plan. There were several record plats filed for the property, the latest of which occurred in 1999, that subdivided various portions of the property. As the property was subdivided, all of the lots that were created had reciprocal parking and access agreements. The subject property, however, was never platted, since it was a small remnant of the parent deed, which originally covered the entire K-Mart plaza property. As the property was further subdivided, the subject property became a smaller and smaller remnant.

Due to their concerns about access to the property, the staff fully discussed it with the applicant, the Division of Traffic Engineering, and Department of law. Based on those discussions, the staff is now recommending approval of this plan, subject to the following 11 conditions as listed on the revised staff recommendation:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffer.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. ~~Include all information from previous development plan.~~
10. ~~Addition of floodplain information.~~
11. ~~Addition of proposed and existing easements.~~
- 9.12. Review by the Technical Committee prior to certification.
- 10.13. ~~Discuss~~ Denote proposed access to the approval of KYDOT.
- 11.14. ~~Discuss~~ Provide streetscape details relative to "Gateway Concept" outlined in the Central Sector Small Area Plan.

Mr. Martin stated that many of the listed conditions were standard ones, including condition #10, which requires that the access be denoted to the approval of KYDOT. Condition #11 refers to the streetscape details required by the "Gateway Concept" recommended by the Small Area Plan. Following their discussions with the applicant, the staff has determined that streetscape improvements will be provided along the North Limestone Street frontage of the property (including curb, gutter, and sidewalk), as well as additional landscaping. The applicant would be required, by Article 18 of the Zoning Ordinance, to provide Vehicular Use Area screening; but they also agreed to provide additional trees and brick pillars.

Commission Questions: Ms. Roche-Phillips asked if the new CVS store across North Limestone Street was also constructed with "gateway" improvements. Mr. Martin answered that, since the CVS was a "by-right" development without a development plan, the staff only reviewed a consolidation plat for the property, and thus did not have the opportunity to require additional improvements or landscaping. He noted that there were some public improvements required and provided as part of the building permit process. Ms. Roche-Phillips asked if the gateway would therefore only be provided on one side of the road. Mr. Martin responded that it would; however, the owners of the Goo Goo Car Wash had completed significant improvements on their property, as well.

Mr. Owens asked if vehicles exiting the subject property via the proposed right-in/right-out access to New Circle Road would be turning directly into the right-hand turn lane from New Circle onto North Limestone Street. Mr. Martin answered that, unfortunately, that was the case. He said that, due to the close proximity of the access to North Limestone, there was no way to avoid such issues. He noted that the median on New Circle Road did provide some reassurance to KYDOT about the safety of the proposed access. Mr. Owens asked if KYDOT had given their approval for the proposed access. Mr. Martin responded that the staff has seen communications that indicate that KYDOT is in agreement with the proposed access.

Ms. Roche-Phillips asked how significant the grade change is between the K-Mart parking lot and the subject property. Mr. Martin replied that he did not know the extent of the grade change, but the staff does not believe that it would be insurmountable.

Applicant Representation: Bruce Simpson, attorney, was present representing the applicant. He stated that the applicant is in agreement with the revised conditions; however, Rory Kahly, landscape architect, did have some questions about condition #14 from the staff's original recommendation.

Mr. Kahly stated that he was concerned about condition #14, which would require the submission of streetscape details. He said that he would prefer to submit those details to the Division of Building Inspection as part of the permit process, rather than providing full details as a development plan sign-off. The reason for his concern is that, when signs or landscaping details are included on a development plan, small changes to the details during the development process can result in the need to file an amended development plan, which can be onerous. Mr. Kahly said that he would like clarification that the landscape details would not need to be provided on the development plan.

Staff Comment: Mr. Martin replied that staff would be satisfied with an exhibit for the file that would demonstrate that the applicant intends to augment the landscaping required by Article 18 of the Zoning Ordinance.

Citizen Comment: No citizens were present to comment on this item.

Discussion: Mr. Cravens asked about the use of the proposed building on the subject property. Mr. Kahly answered that the subject property would be used for car sales. Charvell Joseph, developer, answered that that building is proposed to be used as an office for the car dealership. Mr. Cravens asked if the building is proposed to have garage doors. Mr. Joseph responded that it is proposed to have garage doors, as the dealership currently services cars as well. Mr. Cravens asked if the garage doors are proposed to face New Circle Road, to which Mr. Joseph responded that they are proposed on the eastern portion of the building.

Mr. Owens asked if the Division of Traffic Engineering had any part of the approval process of the proposed access, or if that fell solely to KYDOT. Mr. Neal answered that the Division of Traffic Engineering often collaborates with KYDOT on accesses such as this, but the approval falls primarily to KYDOT when the road in question is a state road. He noted that KYDOT has given permission for the proposed access. Mr. Owens said that the existing intersection at New Circle Road and North Limestone Street is somewhat problematic, and he believed that adding traffic from the proposed access point could exacerbate it. Mr. Neal commented that the subject property is a very small lot, and KYDOT indicated that the proposed access is the applicant's only means of access to a roadway, which is a right for each parcel.

Mr. Cravens asked what materials would be used on the proposed new structure. Mr. Joseph answered that it would most likely be constructed of split-faced concrete block, and would probably look similar to an S & S Tire building. Mr. Cravens asked if the applicant was aware of the Gateway Concept, to which Mr. Joseph responded that the applicant had been made aware of that concept through the development plan process. He noted, with regard to the proposed access, that the applicant had been working with the staff and KYDOT for three months to develop the access.

Action: A motion was made by Mr. Brewer, seconded by Mr. Paulsen, and carried 5-4 (Beatty, Cravens, Owens, and Roche-Phillips opposed; Copeland and Holmes absent) to approve DP 2010-70, subject to the conditions as listed in the revised staff recommendation.

- V. **ZONING ITEMS** - The Zoning Committee met on Thursday, November 4, 2010, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Ed Holmes, Lynn Roche-Phillips, Carolyn Richardson and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

**A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

**B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)
  - (b) citizen objectors (5 minute maximum)
  - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

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1. **CARMIKE CINEMAS, INC., ZONING MAP AMENDMENT & MAPLELEAF SUBDIVISION, UNIT 1, LOT 4, ZONING DEVELOPMENT PLAN**

- a. MAR 2010-11: CARMIKE CINEMAS, INC. (1/2/11)\* - petition for a zone map amendment from a Neighborhood Business (B-1) zone to a Planned Shopping Center (B-6P) zone, for 7.0652 net (7.8076 gross) acres, for property located at 3151 Mapleleaf Drive.

**LAND USE PLAN AND PROPOSED USE**

The 2007 Comprehensive Plan (Sector 9) recommends Retail, Trade and Personal Services (RT) land use for the subject property. The petitioner proposes a Planned Shopping Center (B-6P) zone to alter the allowable use of the property, which is currently restricted to a 10-screen cinema via a 1994 conditional zoning restriction, although the use of the property is not immediately proposed to change.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested rezoning to a Planned Shopping Center (B-6P) zone is in agreement with the 2007 Comprehensive Plan, which recommends Retail, Trade and Personal Services (RT) land use for the subject property.
  2. Removal of the existing conditional zoning restriction, which limits the subject property to only one use, is appropriate in that it is too restrictive. The proposed rezoning will rectify this by eliminating the single-use restriction.
  3. This recommendation is made subject to approval and certification of ZDP 2010-64: Mapleleaf Subdivision, Unit 1, Lot 4, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. ZDP 2010-64: MAPLELEAF SUBDIVISION, UNIT 1, LOT 4 (1/2/11)\* - located at 3151 Mapleleaf Drive.  
**(Endris Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm sewers, sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
8. Denote the location of the trees to be planted to meet the tree canopy requirements.
9. Denote the 50' setback for the B-6P zone.
10. Provide property owner's and developer's information.
11. Denote proposed use in site statistics.
12. Reduce "buildable area" in FEMA floodway and floodplain to match existing building footprint.
13. Denote existing canopy on the front building.
14. Revise parking statistics (required and proposed).
15. Denote zone-to-zone screening.

Zoning Report: Ms. Wade presented the staff report for this rezoning request, briefly orienting the Commission to the location of the subject property to the southwest of the Man O' War Boulevard/Todds Road/Liberty Road intersection. The subject property is located south of Man O' War Boulevard and on the east side of Mapleleaf Drive. Also in the general vicinity of the subject property is a park, to the south, which is zoned R-4; an apartment complex to the east, which is zoned R-3; a B-1 zone to the north, with a Central Bank branch; and the Andover Shoppes, located across Mapleleaf Drive, which is zoned B-6P. Several townhouse developments and two other commercial areas are located across Man O' War Boulevard in this area.

Ms. Wade stated that the subject property was originally rezoned to R-4 in 1982. Some years later, the current owner requested a rezoning to B-1 in order to construct a 10-screen movie theater complex. At that time, the Comprehensive Plan recommended a High Density Residential use, which was in agreement with the existing zoning of the property. The staff and the Planning Commission recommended disapproval of that request, but the Urban County Council rezoned the property to B-1, and added a conditional zoning restriction to prohibit all other uses besides a 10-screen cinema on the property.

Ms. Wade said that the 2007 Comprehensive Plan, which recommends Retail Trade and Personal Services land use for the subject property, is in agreement with the current B-1 zoning. The requested B-6P zoning is also in agreement with that recommendation, and those two zones are very similar in terms of their allowable principal uses.

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The primary differences between the B-1 and B-6P zones are signage restrictions and the allowable conditional uses. The B-6P zone also requires a 50-foot setback from the exterior boundary of the zone.

Ms. Wade stated that the petitioner was concerned that the subject property is overly constrained by a conditional zoning restriction which limits the property to a single use. The Urban County Council has the legal ability to greatly limit the use of a property it rezones, even to a single use, but the Department of Law typically recommends against that approach to conditional zoning because a future potential buyer of the property would be required to rezone it in order to permit any other types of uses there. The staff agrees with the Department of Law, and believes that the B-6P zone is not only in agreement with the recommendations of the Comprehensive Plan, but is also compatible with the existing development in the area. Ms. Wade noted that the subject property is not proposed for redevelopment at this time, but the rezoning would allow for many other possible shopping center uses at this location. She concluded by saying the staff recommends approval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Owens asked why the Council limited the property to one single use via conditional zoning. Ms. Wade answered that a reason must always be provided for conditional zoning; and the reason provided in the rezoning Ordinance for the subject property was to restrict the traffic impact on the adjoining residential neighborhood from a business use at this location.

Mr. Brewer asked if the Council overrode the Planning Commission's recommendation on that rezoning, and in what year that occurred. Ms. Wade concurred, and said that the subject property was rezoned in 1994. Mr. Brewer asked why the Council rezoned the subject property even though the Commission's recommendation was for disapproval. Ms. Wade responded that she assumed that the Council felt that the B-1 would not have the same impact that the Commission and the staff believed that it might.

Development Plan Presentation: Mr. Taylor presented the corollary zoning development plan, using a rendered copy of the plan. He noted that the plan includes 33,000 square feet of buildable area, which equals that for the existing theater building. According to this plan, there are no changes proposed to the subject property at this time.

Mr. Taylor noted that there is an existing FEMA floodplain which runs through the middle of the subject property. If any party seeks to develop that portion of the property in the future, a FEMA Letter of Map Amendment will be required, or the construction will have to accommodate the delineated floodplain area. At the time of the Subdivision Committee meeting, there was a condition on the plan requiring the revision of the buildable area in order to remove the portion from the floodplain. The petitioner subsequently submitted a revised plan, and the staff prepared a revised recommendation, including the following revised conditions:

1. Provided the Urban County Council rezones the property B-6P; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm sewers, sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
- ~~7. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.~~
- ~~8. Denote the location of the trees to be planted to meet the tree canopy requirements.~~
- ~~9. Denote the 50' setback for the B-6P zone.~~
- ~~10. Provide property owner's and developer's information.~~
- ~~11. Denote proposed use in site statistics.~~
- ~~12. Reduce "buildable area" in FEMA floodway and floodplain to match existing building footprint.~~
- ~~13. Denote existing canopy on the front building.~~
- 7.14. Revise parking statistics (required and proposed).
- ~~8.15. Denote zone-to-zone screening to the approval of the Division of Building Inspection.~~

Mr. Taylor stated that the staff recommends approval of this zoning development plan, subject to the revised conditions.

Petitioner Representation: Jim Hodge, attorney, stated that the petitioner is in agreement with the staff's recommendations. He submitted the following prepared written evidence items into the record of this meeting: 1) a "Petitioner's Exhibits" booklet; 2) the 1998 Comprehensive Plan Land Use Map; 3) a current enlarged aerial photograph of the subject property and surrounding area, highlighting the location of the subject property; 4) a pre-development aerial photograph of the subject property and surrounding area, highlighting the location of the subject property; and 5) an enlarged copy of the petitioner's justification for this zone change request.

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Zoning Action: A motion was made by Ms. Beatty, seconded by Mr. Wilson, and carried 9-0 (Copeland and Holmes absent) to approve MAR 2010-11, for the reasons provided by staff.

Development Plan Action: A motion was made by Ms. Beatty, seconded by Mr. Owens, and carried 9-0 (Copeland and Holmes absent) to approve ZDP 2010-64, subject to the eight conditions as listed in the revised staff recommendation.

**2. JAMES WALLER ZONING MAP AMENDMENT & BOBBIE E. & SYLVIA WALLER PROPERTY ZONING DEVELOPMENT PLAN**

- a. MAR 2010-9: JAMES WALLER (11/18/10)\* – petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Wholesale and Warehouse Business (B-4) zone, for 2.52 net (2.73 gross) acres, for property located at 1528, 1532 and 1534 North Limestone.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 2) recommends Medium Density Residential (MD) land use for the subject properties. However, the Plan also denotes (with an asterisk) that this is an “area of special consideration.” The Plan further states that “mixed use with office and limited neighborhood retail should be considered as part of the Central Sector Small Area Plan.” The petitioner proposes to redevelop the property and construct warehouses and shops of special trade on the subject properties.

The Zoning Committee Recommended: Referral to the full Commission.

The Staff Recommends: Disapproval, for the following reasons:

1. The requested rezoning to a Wholesale and Warehouse Business (B-4) zone cannot be found to be in agreement with the 2007 Comprehensive Plan, or the Central Sector Small Area Plan (an adopted element of the 2007 Comprehensive Plan), for the following reasons:
    - a. The 2007 Comprehensive Plan recommends Medium Density Residential (MD) land use, defined as 5-10 dwelling units per net acre, for the subject property with a note that further states that “mixed use with office and limited neighborhood retail should be considered as part of the Central Sector Small Area Plan.”
    - b. The subject properties are located within Sub-Area D of that Small Area Plan, and North Limestone has been designated as a “neighborhood connector” corridor within this particular area. In fact, the properties facing North Limestone are part of a “focus area,” with the intersection of North Limestone and New Circle Road being a major gateway into the Central Sector.
    - c. The Small Area Plan identifies six Sub-Area priorities, one of which is to “retain unique character of North Limestone as a traditional neighborhood retail corridor” and also indicates a need to upgrade the North Limestone streetscape and building façades.
    - d. The proposed B-4 zoning and use of the subject properties is not for retail, office or residential use, and will not be neighborhood-oriented; thus, it cannot be said to be in agreement with the Comprehensive Plan or the Central Sector Small Area Plan.
  2. The proposed Wholesale and Warehouse Business (B-4) zone is inappropriate for the subject property because:
    - a. The type of truck traffic associated with warehouses and shops of special trade (i.e., general contractors, plumbers, painters, major auto and truck repair) is too intense for this “neighborhood connector” corridor.
    - b. The adopted Plans have provided guidance for redevelopment that will support this *unique retail corridor*, rather than business uses that are more intense than those anticipated as part of the redevelopment along North Limestone.
    - c. The B-4 zone is generally not considered an adequate buffer between single family and other business uses, and this case is no exception.
    - d. While the B-3 zoning in this area allows higher intensity uses, the immediate area has developed with mostly professional office and neighborhood business retail uses oriented along North Limestone. Therefore, in comparison, the warehouses and shops of special trade proposed will significantly increase the intensity of use in the area, rather than act as a transition to the existing single family neighborhoods to the south and east along Rosemary Avenue and Loneta Street.
  3. The existing Single Family Residential (R-1C) zone remains appropriate at this location, as the current density for the subject properties is, technically, in keeping with the residential recommendation of the 2007 Comprehensive Plan.
  4. There have been no unanticipated changes of a physical, social or economic nature within the immediate area since the Comprehensive Plan was adopted in early 2007, or since April 2009 when the Central Sector Small Area Plan was adopted as an element of the Comprehensive Plan, that would support an argument for B-4 zoning for the subject properties.
- b. ZDP 2010-49: BOBBIE E. & SYLVIA WALLER PROPERTY (11/18/10)\* - located at 1528, 1532 and 1534 North Limestone.  
**(Vision Engineering)**

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Note: The following plan was postponed at the September 23, 2010, Planning Commission meeting.

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm sewers, sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Complete the adjacent property owner information.
8. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
9. Discuss proposed access to this site.
10. Discuss the need for Limestone Street improvements.
11. Discuss streetscape relative to "Gateway Concept" outlined in the Central Sector Small Area Plan.
12. Discuss the need for tree protection for the significant tree (i.e., 36" Elm tree).
13. Discuss the parking relative to the overhead doors and indoor spaces (if any).
14. Discuss the need for internal sidewalk connections.

Zoning Report: Ms. Wade presented the staff report on this proposed rezoning, noting that the subject property is located very near the property the Commission acted upon earlier during this hearing. The subject property is located on the southeast side of North Limestone Street near its intersection with New Circle Road. She said that the subject property is comprised of three parcels, all fronting on North Limestone. On the opposite side of New Circle Road in the area is an existing car lot, a Kroger store and shopping center, several restaurants and other small businesses. On the subject property side of New Circle Road, there are several commercial properties of varying types and intensities, including a new CVS pharmacy at the corner of North Limestone Street and New Circle Road; an auto repair establishment between the subject properties and the CVS; a proposed car lot, Goo Goo Car Wash, a Goodwill and Windstream facility, a day care center, and an insurance agent on the opposite side of North Limestone Street. Adjacent to the subject properties are two additional residential lots toward Rosemary Avenue. Ms. Wade displayed several photographs of the subject properties and the surrounding area, noting the existing lotting pattern in the area. She also noted that the subject properties are currently occupied by three single-family residences, which were constructed in the 1920s, as well as a significant tree stand.

Ms. Wade stated that the petitioner proposes to redevelop the subject property with 19 units for small warehouses and shops of special trade, in four single-story buildings. Shops of special trade typically house contractors, plumbers, electricians, and similar tradesmen. Ms. Wade said that the 2007 Comprehensive Plan recommends an underlying Medium Density residential land use, which is defined as 5 – 10 dwelling units per acre. The Plan also has a note that refers to this property as an "area of special consideration" by the Planning Commission, which is recommended for mixed-use development, with office and limited retail uses. The Comprehensive Plan devoted a significant amount of attention to the area of the subject properties. The subsequent 2009 Central Sector Small Area Plan has several core guiding principles, two of which are particularly applicable to the area of the subject properties: "enhancing the urban fabric" and "promoting and preparing for redevelopment and investment." The Central Sector was divided into five sub-areas. The subject properties were included in sub-area "D," which generated a great deal of discussion about what the Limestone Street, Loudon Avenue, and Broadway areas need in terms of enhancement. A portion of the text related to North Limestone Street reads: "There are locally-owned retail shops, and they are spurring a renaissance along North Limestone Street from downtown to New Circle Road. They are catering to the needs of Central Sector residents." Ms. Wade made particular note of the fact that the Small Area Plan discussed retail shops in the area. North Limestone Street was also designated as a "neighborhood connector" by the Central Sector Small Area Plan, with a gateway proposed at the New Circle Road/North Limestone Street intersection. The Small Area Plan also had several recommendations related specifically to North Limestone Street, including the designation of focus areas. There were six priorities highlighted for Sub-area D, one of which particularly calls for "traditional neighborhood retail" for North Limestone Street, and identifies the unique character of the area. The Plan also discusses the need for streetscape and building façade renovations along North Limestone Street.

Ms. Wade displayed a drawing from the Small Area Plan for North Limestone Street, and noted that the most important factor in the consideration of the petitioner's request is the Comprehensive Plan recommendation for Medium Density Residential use; the special note on the Plan; the four guiding principles of the Small Area Plan; the amount of work that went into the Small Area Plan; and the specific statements in the Plan about the North Limestone Street area. Collectively, the staff believes that the requested warehouse land use is not in agreement with those recommendations. The proposed use of the subject property does not include retail, office or residential, nor is it neighborhood-oriented. The Planning Commission considered the petitioner's proposal for B-4 zoning on the subject properties twice: during the 2007 Comprehensive Plan and the Central Sector Small Area Plan processes. In

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considering the appropriateness of the proposed B-4 zone at this location, the staff took into consideration the type and amount of traffic generated by shops of special trade, and the fact that that type of traffic is typically dominated by trucks. The staff believes that a B-4 zone, and the heavy truck traffic associated with it, would not be appropriate for the neighborhood surrounding the subject property. Typically, a B-4 zone is not considered to be an adequate buffer between single-family residential uses, which still exist in the area along Loneta Street and Rosemary Avenue, and the B-1 or B-3 commercial zoning on either side of the subject properties. In addition, the B-3 zone, which would allow higher intensity uses along New Circle Road in the area of the subject properties, has not been developed with the more high-intensity uses that could be allowed, but rather with more neighborhood-oriented uses. The proposed warehouse and shops of special trade could significantly increase the intensity of use in the area, rather than acting as a transition between the residential and commercial uses. Therefore, the staff recommends disapproval of this request, for the reasons listed in the staff report and on the agenda. Ms. Wade noted that the Zoning Committee recommended referral of this request to the full Commission.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that this was a revised version of the plan. He stated that the petitioner is proposing to have one access point to North Limestone Street, with an internal parking area. The petitioner is proposing to construct 28,500 square feet of buildable area in 19 units, along with required parking, open space, and landscape buffer areas. Mr. Martin noted that the open space proposed would be part of the "Gateway Concept" included in the Central Sector Small Area Plan.

Mr. Martin said that, when this plan was originally presented to the Subdivision Committee, they recommended approval, with six discussion items. Some of those discussions were related. Several of them centered around the Gateway Concept, particularly with regard to the proposed access and improvements to North Limestone Street, since the petitioner originally proposed two access points to that street. There were also concerns about a significant tree that had been identified in the existing tree stand on the property. The Urban Forester reviewed the site, along with the petitioner, and determined that what was originally identified as a single significant tree was actually a cluster of several smaller trees. That concern, therefore, was resolved. The staff originally had concerns about the relationship of the proposed parking area to the overhead doors on the warehouse units, which was resolved with the submission of this revised plan. The parking requirement for this site is 41 spaces, and there are 53 spaces included on this plan.

Mr. Martin stated that the staff had reviewed this plan, and prepared a revised recommendation, copies of which were distributed to the Commission members prior to the start of this hearing. The staff is recommending approval of this plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property B-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Complete the adjacent property owner information.
8. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
- ~~9. Discuss proposed access to this site.~~
- ~~9.10. Discuss Resolve the need for Limestone Street improvements at time of the Final Development Plan.~~
- ~~10.11. Discuss Resolve the streetscape relative to "Gateway Concept" outlined in the Central Sector Small Area Plan at time of the Final Development Plan.~~
- ~~12. Discuss the need for tree protection for the significant tree (i.e., 36" Elm tree).~~
- ~~11.13. Discuss Revise the required parking from 38 to 41 relative to the overhead doors and indoor spaces (if any).~~
- ~~14. Discuss the need for internal sidewalk connections.~~

Mr. Martin noted that, since this is a preliminary development plan, the Planning Commission will have the opportunity to act upon a final development plan when it is filed.

Commission Questions: Mr. Cravens asked if Mr. Martin could display the original version of this plan, which was reviewed by the Subdivision Committee. Mr. Martin displayed a copy of the original plan. Mr. Cravens asked if that version of the plan depicted parking spaces in the front of the property along North Limestone Street. Mr. Martin answered that the plan originally depicted parking spaces along North Limestone Street, with two proposed accesses. Mr. Cravens asked if the buildings were proposed to face North Limestone Street. Mr. Martin responded that the Planning Commission could discuss the treatment of the building faces at the time of the final development plan, if they so chose.

Ms. Beatty asked if the significant tree to which Mr. Martin referred was a 36" elm tree. Mr. Martin answered that, under the Zoning Ordinance, a tree must be at least 36" in diameter in order to be considered significant.

Subsequent investigation of the tree stand demonstrated that the tree that was originally thought to be 36" in diameter was in fact a grouping of smaller trees, which could not be considered significant. Ms. Beatty asked if those trees could be removed. Mr. Martin responded that those trees could be removed, if the removal was deemed necessary to the development of the site.

Mr. Owens asked if stormwater detention was proposed in the center of the proposed development on the subject property. Mr. Martin responded that, during the course of the review of this plan, the staff became aware that a regional detention/stormwater study had been done for this part of Lexington, and parts of the study have been implemented. In that plan, the area of the subject property was identified as a detention basin. It is the staff's understanding that, should the subject property develop, the petitioner would be required to construct the improvements as outlined by that plan.

Mr. Owens asked if it was correct that there was never a 36" tree on the subject property. Mr. Martin answered that that was correct; it was, instead, a group of trees that were mistakenly identified by the applicant.

Petitioner Presentation: Bruce Simpson, attorney, was present representing the petitioner. He submitted an exhibit packet into the record of the meeting, and distributed copies to the Planning Commission members. Mr. Simpson stated that the petitioner respected the staff's opinion, but they believe that the proposed development could improve a property that is significantly restrained.

Mr. Simpson said that the North Limestone Street area is lacking in improvements. Other than the new CVS pharmacy, there are no new structures on North Limestone Street between Loudon Avenue and New Circle Road. The many development challenges on the subject properties were discussed at length during the Central Sector Small Area Plan process. That study revealed that this part of Lexington struggles in terms of economics, education, income, and access to jobs and automobile transportation. The Small Area Plan mentioned the importance of addressing these concerns as part of any new development in the North Limestone Street area. Mr. Simpson quoted the following excerpt from the Small Area Plan: "This area was chosen by the residents as being the one that they would most like to see updated in terms of streetscape and building facades. Improving the streetscape also provides an opportunity for a sustainable solution to drainage and flooding issues, in the form of rain gardens that line the street and contain landscaping.

Mr. Simpson stated that, although the Central Sector Small Area Plan discusses the Gateway Concept, no design standards were adopted. The petitioner believes that the proposed development could present a benchmark opportunity for the creation of that gateway, since it is expected to be a very attractive addition to the neighborhood. The development plan approved for a car lot at the corner of New Circle Road and North Limestone Street will be required to address the Gateway Concept, and the Goo Goo Car Wash was constructed with an attractive streetscape as well. Mr. Simpson stated that the petitioner hired an architect to design the streetscape for the subject properties, in order to ensure that the proposed development contributes positively to what could become a revitalization of this area of North Limestone Street.

Mr. Simpson said, with regard to developing the subject properties for residential use according to the Comprehensive Plan recommendations, that infrastructure costs would preclude such development. The value of the existing properties in the area would not provide a significant enough return on the required investment to make such development profitable. The location of a significant number of commercial uses, unrestricted by conditional zoning, so nearby the subject properties could make them less suitable for residential development. In addition, the petitioner estimates that the development costs would be \$50,000 per lot for each of the three parcels. Since the average price of the homes bordering the subject properties is approximately \$50,000, it would be impractical to assume that a \$200,000 home would be commensurate with the existing housing market in the area.

Mr. Simpson stated that the petitioner has been involved with projects like the proposed development before, and believes that this development could bring a significant number of jobs to the area, without having a negative impact on the existing neighborhood. The types of businesses that are expected to locate there are not dominated by heavy truck traffic.

Mr. Simpson displayed several photographs of the subject property, depicting the following: 1) the Waller property, noting the lack of curbs, gutter, sidewalk, and connectivity to the adjacent residential area; 2) the property directly across North Limestone Street, which includes the Goodwill and Windstream facilities; 3) the Goodwill facility, noting the large amount of impervious surface and lack of detention facilities; 4) offices next to the Goodwill facility; 5) Goo Goo Car Wash, which is one of the only two new structures in this area; 6) the property immediately adjacent to the subject property, which is currently being used as a "staging area" for LexTran and Wheels vehicles; 7) the sign for the CVS pharmacy; 8) the property to the north of the subject property, which is adjacent to CVS and is currently used for an auto parts store and other small commercial uses; 9) property one block away from the subject property, on the east side of North Limestone Street, which is currently in use as a used furniture store; and several other photographs demonstrating the existing commercial uses in the vicinity of the subject property.

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Mr. Simpson referred to the petitioner's exhibit packet, noting in particular the following exhibits: 1) a colored map of the subject property and surrounding area, demonstrating the large number of commercial uses near the subject property; 2) a chart detailing the land use category percentages on North Limestone Street between Loudon Avenue and New Circle Road, which indicates that 66% of the properties currently contain business uses on the east side of North Limestone Street, while 41% of the uses on the west side of the street are businesses; and 3) the 2007 Comprehensive Plan land use map for the subject property, calling attention to the star which refers to the property's inclusion in the Central Sector Small Area Plan. Mr. Simpson stated that the Plan recommends a mixed use, including offices for the subject property. He said that the petitioner does propose to use a portion of the subject property for offices, with an office area included with each small warehouse facility.

Jim Waller, petitioner, stated that there is currently a demand for small warehouse-type businesses in the Lexington market, to serve as a location for shoe salesmen, medical supply sales, etc. Mr. Waller noted that most of those businesses have a small office as well.

Mr. Simpson asked Mr. Waller to address the issue of truck traffic on the subject property. Mr. Waller stated that most of the lessees at his existing facility receive an occasional shipment, which is delivered by truck; but the units are primarily used for storage, and are usually accessed by automobiles.

Referring again to the petitioner's exhibit packet, Mr. Simpson stated that he had included an excerpt from KRS 100.213 in support of the petitioner's belief that the Comprehensive Plan is important as a guide, but the Plan's recommendation is not always the most suitable for a given property. Mr. Simpson noted that the packet also contains: a residential development cost breakdown for the subject property, which indicates that the approximate cost of development would be \$50,510 per residential lot; a list of assessed values for the single family homes bordering the subject property, the average of which is \$51,296; an architectural rendering of the proposed development; a series of photographs depicting the existing buffering between the subject property and the homes on Loneta Street and Rosemary Avenue; a list of proposed conditional zoning restrictions for the subject property; and findings of fact for approval of the proposed rezoning.

Mr. Simpson noted, with regard to their list of proposed conditional zoning restrictions, that the petitioner wanted to be sensitive to the needs of the nearby residents, so they were proposing to prohibit many of the allowable uses in the B-4 zone. The petitioner has agreed to maintain the existing tree stand on the subject property, and to enhance the landscape buffer by constructing a 6' fence and planting pine trees 8' on center. In addition, the petitioner is willing to commit to developing the subject property in substantial conformance with the architect's rendering.

Mr. Simpson said that one of the reasons the petitioner requested postponement was to address the stormwater detention issues as discussed in the stormwater study for the subject property and surrounding area. That study recommended the subject property for a regional detention basin, recognizing that there are no storm sewers in this area. Most of the stormwater from Loneta Street and Rosemary Avenue flows over the subject property to the CVS pharmacy, where detention is provided. The petitioner had an engineer calculate the stormwater flows in the area, and then redesigned the proposed development to address the existing stormwater issues on the subject property and in the surrounding area. The petitioner contends that the neighborhood would benefit from these measures (as well as the curbs, gutters, sidewalks, and additional jobs that might be generated by the proposed development), that it would not receive if the subject property remains zoned for single-family residential use.

Commission Questions: Mr. Paulsen asked what size the proposed storage units would be. Mr. Waller answered that each unit would have a 30'x50' warehouse and a small office. Mr. Paulsen asked how that compares to a typical self-storage unit. Mr. Waller responded that most of those units are 10x10 feet in size.

Mr. Cravens asked, with regard to the proposed conditional zoning restrictions, if automotive repair businesses would be allowed as part of the development. Mr. Simpson responded that the petitioner does not plan on allowing auto repair on the subject property, but they did not want to constrain it unnecessarily. He added that the Planning Commission could add that restriction if they so chose.

Ms. Roche-Phillips asked what differentiates the proposed development from a typical self-storage facility, and noted that she was having difficulty understanding how this development would create new jobs. Mr. Simpson answered that the petitioner estimates that 19 businesses will locate in the proposed development, with a total of 50 new jobs in the area. Mr. Waller stated that typical self-storage units do have electricity and/or water service, and the proposed development will; he added that many of the businesses will have a receptionist and/or inventory manager as well. Many of the possible tenants could employ one or two individuals.

Mr. Simpson stated, with regard to a photograph from the exhibit packet that depicts the tree stand on the subject property, that the Urban Forester had reviewed what was originally believed to be a significant tree, and determined instead that it was a cluster of small trees.

Mr. Brewer asked how the petitioner calculated the estimated 50 new jobs that could be created by the proposed development. Mr. Waller responded that he took an inventory of the employees at his existing similar facility. Mr. Brewer asked where the similar development is located, to which Mr. Waller replied that it is located on Eastland Parkway, and the businesses there employ about 50 people.

Mr. Owens asked if equipment storage would be allowed for plumbers, contractors, or electricians who choose to locate in the proposed development. Mr. Waller answered that that would not be permitted, because he would prefer to maintain a more professional appearance for the other tenants in the development. Mr. Owens asked if Mr. Waller would be willing to restrict such storage via a conditional zoning restriction, to which Mr. Waller agreed.

Mr. Cravens asked what materials would be used on the exterior of the proposed buildings. Jere Sullivan, architect, answered that the exterior of the building would be constructed of tinted split-faced block and stucco, and it should be attractive and durable. He noted that a similar material was used at the nearby CVS pharmacy.

Citizen Support: Jim McLaughlin, neighborhood resident, stated that he is a full-time student at Strayer University, and will graduate soon with a degree in Information Technology. Mr. McLaughlin believes that the proposed development could provide space for a computer-repair business, which might bring jobs in his field to the neighborhood. He said that he sometimes has to walk several miles to a part-time job, and he believes that it would be helpful to have a new source of employment in the vicinity.

Sandra McNeese, neighborhood resident, stated that she believes that the proposed development could be a good opportunity for new jobs in the area, and it would look much better than the existing single-family residences. Ms. McNeese said that she supports the proposed rezoning.

Citizen Opposition: There were no citizens present in opposition to this request.

Staff Rebuttal: Ms. Wade displayed on the overhead projector a list of the allowable uses in the B-4 zone, to provide the Commission with a point of reference for the petitioner's proposed conditional zoning restrictions. She stated that many of those uses would typically not choose to locate so far from a major arterial roadway. Ms. Wade said that, should the Commission choose to approve this request, the staff believes that there are a number of allowable uses that should be restricted, including car sales.

Ms. Wade stated that the staff understands that there might be a possible market for the proposed use, but they do not believe that the subject property is the appropriate location for it. The petitioner contends that the proposed development could serve as a buffer for the nearby residential properties, but the staff does not agree with that assessment.

With regard to the petitioner's contention that single-family residences would not be marketable on the subject property, Ms. Wade said that the Comprehensive Plan suggests a mix of uses, including high-density residential, which could spread that cost over a greater number of units and different uses, such as office and commercial uses. She reiterated that the staff is recommending disapproval of this request.

Commission Question: Mr. Brewer asked if the staff would still be opposed to this request if the petitioner agreed to further restrict the proposed uses via conditional zoning. Ms. Wade answered that the staff does not recommend approval.

Mr. Cravens asked if the staff would recommend B-3 zoning for the subject property, to which Ms. Wade responded that they would not. She said that other zones that could be in agreement with the recommendations of the Comprehensive Plan and the Small Area Plan would be B-1, a mixed-use zone, or a combination of residential and B-1 zoning. Mr. Cravens asked if the B-4 zone allows many of the same uses as the B-1 and B-3 zones. Ms. Wade answered that the overlap between those zones is very minimal, and includes only retail sale of building materials and lumber, and car sales. There are some accessory uses that overlap between those zones.

Petitioner Rebuttal: Mr. Simpson stated that he had conferred with the petitioner with regard to the proposed conditional zoning restrictions, and noted that the petitioner is willing to add masonry, metalwork, car and truck repair, machine shops, and major or minor auto and truck repair to the list of prohibited uses. He said that the restriction of those uses would be consistent with the petitioner's representation of the types of businesses he would seek for the proposed development. Mr. Simpson reiterated that the petitioner contends that the proposed B-4 zone, with the significant conditional zoning restrictions, would be an improvement for the neighborhood.

Staff Comment: Ms. Wade stated that, whether the subject property redevelops as proposed or in some other fashion, the stormwater and sidewalk issues would be required to be addressed, not as a "bonus" for the neighborhood as the petitioner contends.

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Citizen Rebuttal: Mr. McLaughlin stated that he believed that the petitioner is making a good effort to improve the neighborhood, and he believed that the Planning Commission should recognize that attempt.

Commission Questions: Ms. Roche-Phillips asked if there have been any significant economic, social, or physical changes in the area of the subject property since the adoption of the 2007 Comprehensive Plan, and if the construction of the CVS pharmacy and Goo Goo Car Wash could have an impact on the property. Ms. Wade answered that the Goo Goo Car Wash property was rezoned a few months prior to the adoption of the Central Sector Small Area Plan in early 2009, and the CVS was redeveloped within the past year.

Mr. Brewer said that he was reluctant to make findings contrary to the recommendations of the staff, the Comprehensive Plan, and the Small Area Plan. He noted, however, that he is very familiar with the area around the subject property, and he believes that it is sorely in need of updating. Mr. Brewer said that, given the state of the residences in the neighborhood and the number of commercial uses further south on North Limestone Street, he would be comfortable with allowing commercial uses to move a bit closer to the residences. He believes that the proposed development would be attractive and would enhance the Gateway Concept, while possibly enticing additional businesses to locate in the area. Mr. Brewer said that he would be comfortable with approving this request.

Mr. Cravens stated that he agreed with Mr. Brewer. He said that he owns some similar properties, and he believes that the proposed development could generate many new jobs in the area. He noted that he has many tenants who had been cited for running their businesses out of their homes, and rented a small warehouse space to house the business. Once the businesses relocate to these types of spaces, they often grow, sometimes even outgrowing the small warehouse space. Mr. Cravens said that he believes that, since the proposed development would face inward, the impact of the businesses on the neighborhood would be lessened, while presenting an attractive face to the neighborhood. He noted that he would support a recommendation of approval of this request.

Mr. Wilson stated that he was conflicted about this request, because he believes that it is important to provide as many jobs as possible, particularly in the current economy. He said that he did not see how the petitioner could guarantee that the new jobs employ individuals from the neighborhood. He added that he would be interested to see what educational level would be required for those jobs. Mr. Waller stated, with regard to Mr. Wilson's comments, that he has been managing a facility similar to the proposed development for approximately 10 years. He said that one of the tenants at his existing facility is a pharmaceutical sales representative, who originally had one employee. That employee has since developed a business selling toothpastes, etc., and the tenant has hired an additional individual. Mr. Waller stated that another tenant is a carpet layer who uses the warehouse facility as a storage location for his tools and company van. That tenant has two or three employees, all of whom live near the facility, who meet him on site each day and travel with him to job locations.

Mr. Owens stated that he was also conflicted; he believed that the petitioner's proposal was a good one, but he was concerned that the subject property might not be the appropriate area for it. He said that he is concerned about the loss of medium-density housing, and the possibility of more commercial developments encroaching on the existing residential area. Mr. Owens said that he agrees with the staff that, however the subject property is developed, the Gateway Concept should be upheld, and all of the necessary infrastructure improvements must be made. He noted that he was inclined to agree with the staff's recommendation for disapproval.

Ms. Roche-Phillips stated that she believed that the existing residential zoning was inappropriate for the subject property, because she did not believe that any further residential development would occur in this area. She also believed that there had been major changes in the area since the adoption of the Comprehensive Plan, and she would be comfortable with a recommendation of approval for this rezoning.

Mr. Paulsen stated that he was on the committee that developed the Central Sector Small Area Plan, and there was a great deal of discussion about the need for economic development in the area. He believes that the proposed development could be a small business incubator, and that the proposed B-4 zoning would be more appropriate at this location. He agreed with Ms. Roche-Phillips, that he could support a recommendation of approval.

Zoning Motion: A motion was made by Mr. Brewer, and seconded by Ms. Roche-Phillips, to approve MAR 2010-9. for the following reasons:

1. The existing R-1C zoning is inappropriate.
  - a. The property shares a long boundary with B-3 commercial businesses that front on New Circle road. These properties were developed for B-3 uses prior to the enabling legislation that allowed urban county governments to impose conditional zoning restrictions. Thus, the zoning on these properties allows the full range of intensive uses that are permitted in the B-3 zone. The noise, light and unrestricted intensive uses on the B-3 commercial strip are incompatible with the low density, single-family residentially zoned area immediately adjacent to it.
2. The proposed B-4 zoning is appropriate.



- a. The B-4 development of small warehouses with associated offices and some retail will provide a much needed buffer between the unrestricted B-3 properties to the north and the residential neighborhood to the south. The buffer will not only provide a less intensive land use in terms of uses, business hours, noise and traffic, but the B-4 landscape buffer will provide an attractive new feature that is lacking in this part of the North Limestone corridor.

Legal Comments: Ms. Boland stated that the Department of Law would recommend that the references to a specific architect and plan not be added as part of the conditional zoning restrictions, but rather as a condition for approval of the development plan. She noted that, with the exception of H-1 overlay zoning, architectural and design features are not able to be regulated by conditional zoning.

Discussion: Mr. Brewer stated that there seemed to be some difficulty with the proposed conditional zoning restrictions, and requested a brief recess in order to allow Ms. Boland, the staff, and the petitioner's counsel to draft the appropriate language.

Note: Chairwoman Richardson declared a brief recess at 4:16 p.m. The meeting reconvened at 4:28 p.m.

Amended Motion: Mr. Brewer amended his motion for approval of MAR 2010-9, for the reasons as read immediately prior to the recess, subject to the following conditional zoning restrictions:

Under the provisions of Article 6-7 of the Zoning Ordinance, the subject property shall be subject to the following restrictions via conditional zoning:

- a. The subject property shall be limited to the following PRINCIPAL USES:
  1. Wholesale establishment, wholesale establishment with warehouses, storage, and warehousing.
  2. Shops of special trade and general contractors, such as plumbing; heating; carpentry; painting; plastering; printing; publishing; lithographing; engraving; electrical; sign painting; upholstery; tile, mosaic and terrazzo work; electroplating; interior decorating.
  3. Parking lots and structures.
  4. Animal hospitals or clinics, provided that such structures or areas used, not including accessory parking areas, shall be at least one hundred (100) feet from any residential zone.
  5. Offices of purchasers, processors and handlers of agricultural products, limited to administrative uses only.
  6. Sales of feed, grain, or other agricultural supplies.
  7. Garden centers.
  8. Establishments and lots for the sale of farm equipment, contractor equipment, automobiles, trucks, mobile homes, recreational vehicles, such as mini-bikes, motorcycles, bicycles, boats or supplies for such items.
  9. Establishments for the sale of pre-cut, prefabricated, or shell homes.
  10. Retail sale of building materials and lumber.
  11. Mail order business.
  12. Office uses, limited to a maximum square footage of 60% of the floor area in the building in which the use is located.
  13. Office/warehouse mixed-use project, as further regulated by Article 8-21(o)(3).
  14. Adaptive Reuse Projects, as further regulated in 8-21(o)4.
- b. Outdoor music or sound systems and call boxes shall be prohibited.
- c. Lighting shall be shielded and directed downward and away from the neighborhood residential areas.
- d. Landscape/Buffering
  1. There shall be a 50' open space and landscape buffer along the entire property abutting the lots facing Rosemary Avenue and Loneta Street. An 8' tall solid wood fence shall be placed along the length of the open space/buffer area. Within this open space/buffer area, the developer shall plant and maintain 8' evergreen trees planted 15' on center.
  2. There shall be a 50' setback along the front of the property which shall contain landscape/open space buffer (excluding the access drive to the interior of the property and parking spaces, as depicted on the preliminary Zoning Development Plan.) Within the landscape/open space buffer, the developer shall plant and maintain 8' tall deciduous trees planted 15' on center, and 3' shrubs interspersed with the trees.

These restrictions are necessary and appropriate to provide an aesthetically pleasing gateway feature to the North Limestone Corridor, and to protect the adjoining residential neighborhood from the potential negative effects of more intensive uses that could occur in the B-4 zone without restriction.

Ms. Roche-Phillips agreed to the amendment.

Zoning Action: Mr. Brewer's motion carried, 7-2 (Blanton and Owens opposed; Copeland and Holmes absent).

Development Plan Action: A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, and carried 9-0 (Copeland and Holmes absent) to approve ZDP 2010-49, subject to the 11 conditions as listed in the revised staff

recommendation; adding a new condition #12 to require a 50' landscape buffer along the entire property abutting Rosemary Avenue and Loneta Street; adding a new condition #13 to provide gateway details along the frontage of the property at the time of the Final Development Plan, implementing the Central Sector Small Area Plan; adding a new condition #14 to denote that the developer shall construct the buildings facing North Limestone Street, with the façades of the buildings being a mix of split-faced concrete block and stucco, with storefront windows and pedestrian doors. The building's façades shall be varied in height and building materials; there shall be no overhead or vehicular doors facing North Limestone Street.

**3. PHI GAMMA DELTA HOUSE CORPORATION ZONING MAP AMENDMENT & COLUMBIA HEIGHTS, LOT 20 ZONING DEVELOPMENT PLAN**

- a. MARCV 2010-12: PHI GAMMA DELTA HOUSE CORPORATION (1/2/11)\* - petition for a zone map amendment from a Two Family Residential (R-2) zone to a Planned Neighborhood Residential (R-3) zone, for 0.1722 net (0.2996 gross) acre, for property located at 578 Woodland Avenue & 505 Columbia Avenue. A conditional use permit application and a dimensional variance request have also been filed in conjunction with this zone change.

LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends Medium Density Residential (MD) future land use for the subject property, which is defined as 5-10 dwelling units per net acre. The petitioner proposes the rezoning in order to construct a fraternity house and off-street parking. A fraternity house is a conditional use in the Planned Neighborhood Residential (R-3) zone.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested Planned Neighborhood Residential (R-3) zone is in agreement with the 2007 Comprehensive Plan, for the following reasons:
  - a. The subject property is recommended for Medium Density Residential land use, defined as 5-10 dwelling units per net acre. The petitioner proposes essentially one dwelling unit with a maximum of four residents on the subject property. This is considered a reduction in the residential density at this location, and is more consistent with the recommended land use than the existing two residential structures.
  - b. The 2007 Comprehensive Plan's Goals and Objectives support the provision of housing opportunities to meet the needs of all citizens (Goal 13), which includes students and Greek organizations. The proposed redevelopment of the subject property supports this goal by allowing for the construction of a fraternity house adjacent to the University of Kentucky campus.
2. The proposed land use of a fraternity house is appropriate at this location, because it is adjacent to the University of Kentucky campus. It is in close proximity to a significant number of other Greek organizations, which include sororities and fraternities in the Rose Street, Columbia Avenue, Euclid Avenue and East Maxwell Street areas.
3. This recommendation is made subject to approval and certification of ZDP 2010-63: Columbia Heights, Lot 20, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
4. Under the provisions of Article 6-7 of the Zoning Ordinance, the following uses shall be restricted on the subject property via conditional zoning:
  - a. No more than two residential dwelling units may be permitted on the subject property.
  - b. The use of the property shall be limited to:
    1. Single-family detached residence.
    2. Two-family dwelling unit.
    3. Any Conditional Use approved by the Board of Adjustment or Planning Commission

This restriction is appropriate and necessary for the subject property in order to ensure compatible development; and if a conditional use does not develop on the subject property, then the property shall develop in a manner recommended by the 2007 Comprehensive Plan.

- b. REQUESTED CONDITIONAL USE AND VARIANCE

REQUESTED CONDITIONAL USE

1. Fraternity House

REQUESTED VARIANCE

1. To reduce the required side street side yard along Columbia Avenue from 20' to 3' for off-street parking

The Staff Recommends: **Approval** of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The

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proposed fraternity house will have a limited number of residents (fewer than that provided by the current situation), and the types of assembly and study activities to take place are not inherently noisy or otherwise disturbing. The two dwellings to be demolished will be replaced with a single building and a landscaped parking lot with a few feet of separation from the Columbia Avenue sidewalk, which should be beneficial and an improvement over the existing site conditions.

- b. All necessary public services and facilities, such as police and fire protection, are available and adequate for the proposed use.

The Staff Recommends: **Approval** of the requested variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The existing parking lot has a side street side yard of 0', with paved areas immediately adjacent to the public sidewalk along Columbia Avenue. A side street side yard of 3' will at least provide sufficient room for a landscape buffer and a physical separation between the sidewalk and the parking lot, which will improve public safety and the overall appearance of the parking areas.
- b. The narrow width of the lot, as well as the current site conditions, are special circumstances that contribute to justifying a reduction in the required side street side yard at this corner location.
- c. Strict application of the Zoning Ordinance would result in a significant portion of the property being unavailable for off-street parking, which could be considered unreasonably restrictive given the manner in which the property is currently developed.
- d. The appellant has worked diligently to design a redevelopment that is both functional and in compliance with the numerous yard limitations, landscaping requirements and other provisions regulating development in the R-3 zone. The single variance that has been requested should not be interpreted as an attempt to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- 1. Should the subject property be rezoned to R-3, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Planning Commission, with at least a 3' side street side yard to be provided along Columbia Avenue.
  - 2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition and construction, and prior to occupancy of the new facility.
  - 3. Use of the facility shall be as described in the applicant's MAR application received on October 14, 2010, with a focus on scholarship activities, group studies, tutoring and pledge education.
  - 4. The parking lot and driveway shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
  - 5. The final design of the parking lot, access drive and internal circulation shall be subject to review and approval by the Division of Traffic Engineering.
  - 6. Any outdoor pole lighting for the parking lot shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties. Such lighting shall have a maximum height of 25'.
  - 7. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- c. **ZDP 2010-63: COLUMBIA HEIGHTS, LOT 20 (1/2/11)\*** - located at 578 Woodland Avenue and 505 Columbia Avenue.  
**(Endris Engineering)**

The Subdivision Committee Recommended: **Approval**, subject to the following requirements:

- 1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
- 2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
- 3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
- 4. Building Inspection's approval of landscaping and landscape buffers.
- 5. Urban Forester's approval of tree inventory map.
- 6. Denote stormwater detention status (off site).
- 7. Complete required tree inventory information.
- 8. Denote floor area ratio.
- 9. Denote height of building.
- 10. Provided the Planning Commission grants the waiver(s) requested.
- 11. Resolve extent of TPA proposed relative to the root zone and required canopy.
- 12. Discuss the tree to be removed at the corner of Woodland Avenue and Columbia Avenue.
- 13. Discuss useable open space provided.

Zoning Report: Ms. Wade presented the staff's zoning report, noting for the record that the staff had received four letters of objection to this request. She then circulated copies of those letters to the Commission members.

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Ms. Wade briefly oriented the Commission members to the location of the subject properties at the eastern corner of Columbia and Woodland Avenues. She said that the properties are located diagonally across from the W.T. Young Library and the University of Kentucky Campus. Also in the vicinity are the Woodland Learning Center, on the opposite side of Woodland Avenue; and the Christian Student Fellowship and Wesley Center buildings on the southern corner, which are both church-related uses. Ms. Wade said that most of the zoning in the general vicinity of the subject properties is R-2, including part of the library property. The learning center is zoned R-3, and there is one other R-3 property to the northeast of the subject property, which has been developed with condominiums. The remainder of the University of Kentucky property toward South Limestone Street is zoned R-4.

Ms. Wade stated that the petitioner currently has a fraternity house located on Maxwellton Court, which is on the opposite side of South Limestone Street. The University of Kentucky would like to purchase that property, so the fraternity is proposing to rezone the subject properties, which are located adjacent to campus, in order to accommodate a fraternity house there. Fraternity and sorority houses are allowed in the R-3, R-4, and R-5 zones, but only as conditional uses. Ms. Wade displayed several photographs of the subject property and surrounding area, noting the two existing single-family structures on the subject properties, one on each lot. The existing density on the subject properties is 11.76 dwelling units per acre. Construction of the proposed fraternity house would require the demolition of the existing structures.

Ms. Wade stated that the petitioner is proposing to construct a small, and somewhat unconventional, fraternity house. It would be less than 2,000 square feet in size, and would have only two bedrooms to accommodate four resident fraternity members. The rest of the structure is proposed to be used for either common areas or education-oriented uses, which explains the petitioner's reference to it as a "study lodge" rather than a typical fraternity house. It would, however, meet the definition of a "fraternity house" as defined by the Zoning Ordinance.

Ms. Wade said that the 2007 Comprehensive Plan recommends three different land uses at the Columbia/Woodland Avenue intersection. The Plan recommends Other Public Use for most of the University property, including the parcel on which the library is located. On the southeast side of Woodland Avenue, the Comprehensive Plan recommends Medium Density Residential use for the subject properties, as well as the properties to the east and south along Columbia and Woodland Avenues. The Plan recommends Semi-Public land use on the opposite side of Columbia Avenue, for the existing church uses.

Ms. Wade stated that, because of the unconventional layout of the structure, the proposed use would be more similar to a single-family residence than a typical fraternity house. The requested use and zoning, therefore, could be considered to be in agreement with the recommendations of the 2007 Comprehensive Plan. The staff also considered that the R-3 zone accommodates single-family, two-family, and multi-family uses, which is consistent with the existing uses along Columbia and Woodland Avenues. The staff also considered the appropriateness of a fraternity house on the subject properties, due to recent text amendments pertaining to student housing. The staff learned, through conversations with the University's Student Affairs office, that the University recommends that Greek organizations consider locating near other existing Greek organizations, particularly along Woodland Avenue, Rose Lane, Pennsylvania Court, or near East Maxwell Street between campus and the downtown area. The subject properties are consistent with the University's recommendations for the location of fraternity houses. The petitioner did have the opportunity to rent property from the University at another location, but they determined that arrangement to be unsuitable for their needs. Ms. Wade noted that the subject property is also located near a number of other Greek organizations, which are primarily located in an area bounded by Rose Street, Woodland Avenue, and Columbia Avenue. There are a few other such organizations located in the Maxwell Street and South Limestone Street areas. With regard to the nearby Columbia Heights neighborhood, the staff does not believe that the proposed fraternity house would negatively impact those residents any more than do the existing single-family residential uses on the subject properties, or than the existing assembly uses across Columbia Avenue. Ms. Wade stated that the community must be willing to accommodate Greek organizations, and student housing in general, either on or off campus. Goal 13 of the 2007 Comprehensive Plan states that, "the community should provide housing opportunities to meet the needs of all citizens." The staff is recommending conditional zoning restrictions to limit the number of units and the use of the property, since the proposed R-3 zone would allow residential development of varied densities and types. Ms. Wade said that the staff and Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Commission Questions: Mr. Wilson asked how many students were proposed to live in the fraternity house. Ms. Wade answered that the petitioner proposes to have two bedrooms, with four residents. Mr. Wilson asked if those residents would be allowed to bring in an unlimited number of guests, to which Ms. Wade responded that that was correct. She noted that the layout of the proposed fraternity house should prevent the use of open space for bedrooms. Mr. Wilson said that he was concerned about parking on the subject properties. Ms. Wade stated that Mr. Martin would address that issue in the development plan presentation.

Mr. Owens asked if the child care center located across the street from the subject properties is a 24-hour operation. Ms. Wade answered that she did not think it was a 24-hour facility, but she was not sure.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, noting that the petitioner proposes to construct a structure with a 1,870 square-foot footprint, and 30 feet, or two stories, tall. The petitioner proposes to add an access point to Columbia Avenue, and provide a sufficient number of parking spaces to meet the Zoning Ordinance requirements. The petitioner proposes to remove three trees, but should still be able to meet the tree canopy requirements. Mr. Martin stated that a previous version of this plan was recommended for approval by the Subdivision Committee. The petitioner subsequently filed this revised plan, which satisfied several of the earlier "clean-up" conditions. The staff has prepared a revised recommendation, copies of which were distributed to the Commission members prior to the start of the hearing, which includes the following conditions for approval:

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote stormwater detention status (off site).
- ~~7. Complete required tree inventory information.~~
- ~~8. Denote floor area ratio.~~
- ~~9. Denote height of building.~~
- 7.10. Provided the Planning Commission grants the waiver(s) requested.
- ~~11. Resolve extent of TPA proposed relative to the root zone and required canopy.~~
- ~~12. Discuss the tree to be removed at the corner of Woodland Avenue and Columbia Avenue.~~
- 8.13. Discuss useable open space provided.

Mr. Martin noted that condition #7 refers to the required waiver to the open space requirements. He said that the petitioner is requesting a waiver of the front side yard. Since corner lots technically have two front yards, it can be difficult to meet the yard requirements for each. Therefore, the petitioner is seeking to reduce the setback from 20' to three feet. This request is important for the development of the subject property, because the petitioner would not be able to meet the parking and open space requirements unless it is granted. Mr. Martin stated that staff was recommending approval of this plan.

Variance and Conditional Use Presentation: Mr. Marx stated that the petitioner had requested both a variance and a conditional use permit in conjunction with this rezoning. He noted that the waiver to which Mr. Martin referred is actually the variance request to reduce the side street side yard along Columbia Avenue from 20' to three feet in order to accommodate the proposed parking lot. The conditional use request is to establish a fraternity house in the R-3 zone.

Mr. Marx said that the staff believes that the variance request is justified, since each of the subject lots is only 50' wide, and corner properties typically have very large yard requirements. If the petitioner was required to comply with the 20' side street side yard and the required 5' side yard on the other side of the lot, they would lose approximately 50% of the buildable area on the property. Mr. Marx stated that paving currently exists in the proposed parking area of the property up to the sidewalk, which is a less than desirable situation. For public safety purposes, it is important to have some separation between parking and sidewalk areas. Although the petitioner has requested a fairly substantial reduction, they are proposing to maintain a 3' side yard, which would provide space for a landscape buffer, which does not currently exist on the property, and would allow for a separation between the sidewalk and the parking area. The staff is recommending approval of the variance request, for the reasons as listed in the staff report and on the agenda, and subject to the conditions as listed.

With regard to the requested conditional use permit, Mr. Marx said that the staff must consider whether or not the petitioner can undertake the proposed activity without adversely impacting the surrounding properties. He stated that, after considering several factors, the staff does not believe that the proposed fraternity house would have an adverse impact on the surrounding properties. Firstly, the staff considered the uses of the surrounding properties, including the child care center and church assembly uses. The staff believes that, particularly given the atypical nature of the proposed fraternity house, that its activities would be very compatible with the surrounding uses. The staff does not believe that there would be anything inherently noisy or disturbing about the proposed "study lodge," but they would ask that the petitioner maintain the activities on the property according to that description. The proposed use of the property for a fraternity study lodge would actually result in a reduction of the intensity of the residential use on the subject property, so the staff does not believe that the nearby residents should be concerned about more intense residential uses. Mr. Marx stated that the staff is also recommending approval of the conditional use request, for the reasons as listed in the staff report and on the agenda, and subject to the conditions as listed. He noted that condition #3 is not typical, but the staff believes that it is important to hold the petitioner to the use of the property as a study lodge, since the location of a fraternity house is often a sensitive issue.

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Commission Questions: Mr. Owens asked, with regard to Mr. Marx's reference to requiring the petitioner to use the property exactly as described, how that could be enforced. Mr. Marx answered that enforcement of such a use is typically done on a complaint basis. If the Division of Building Inspection was notified by neighbors that activities appeared to be occurring on the property that were not in line with the approved conditional use, then the property would be inspected. From the petitioner's perspective, the issue of enforcement is very important, since problems on the property could threaten their large investment in the new facility. Mr. Owens asked if a conditional use revocation could be a possibility if there are complaints, to which Mr. Marx responded that such a hearing could be requested in a worst-case scenario.

Ms. Roche-Phillips asked if the Planning Commission had the authority to act on behalf of the Board of Adjustment to revoke a conditional use permit that they had approved. Mr. Marx answered that they did not. Ms. Boland stated that the statute only grants the Planning Commission the ability to consider approving a conditional use and/or variance in connection with a zone change. After that, the jurisdiction for regulating and enforcing a conditional use would go back to the Board of Adjustment, to the extent the Board could act as if it had initially approved the request.

Ms. Roche-Phillips asked if the subject property is currently owned by the fraternity. Ms. Wade answered that the property is owned by Touchstone Properties.

Petitioner Presentation: Ben Simmons, project associate, stated that he was representing the petitioner as a graduate member of the fraternity. He submitted into the record of the meeting a set of architectural renderings of the proposed study lodge, and three letters of commendation for the fraternity, two of which were from neighboring entities at the fraternity's current location on Maxwellton Court. Mr. Simmons displayed the three renderings on the overhead projector, noting that they depicted: 1) the exterior of the proposed building; 2) the interior of the proposed building, noting the group study, television, and lounge areas; and 3) floor plans for the building, noting that one bedroom is proposed for each floor, with study space on each floor as well.

Mr. Simmons stated that the fraternity has devoted such a large portion of the proposed building to study space because of fundraising methods. Several years ago, the international fraternity was audited by the IRS, which resulted in the creation of an educational foundation. The foundation receives donations from graduates, and uses them to fund study spaces and materials inside fraternity houses. The educational foundation offers the advantage of tax-deductible donations to graduate members, as opposed to funds donated to the international fraternity itself. Mr. Simmons said that the designation of such a large portion of the proposed facility as study space increases the fraternity's fundraising abilities, since those donations would be tax-deductible. With regard to concerns about adding more bedrooms to the proposed building, Mr. Simmons noted that, based on the fraternity's agreement with its educational foundation, the designated study space areas can only be used for that purpose. Mr. Simmons stated that the proposed building would be alcohol and tobacco-free, and he noted that the University of Kentucky chapter of the fraternity was the first in the country to voluntarily become alcohol-free in 2001. The house is proposed to be constructed to LEED Platinum standards, and would be the only such fraternity house in the United States.

With regard to the concerns about parking, Mr. Simmons said that the zoning development plan indicates that the required six parking spaces will be provided on the property, but there will not be sufficient space for any additional parking. The fraternity met with neighborhood residents some time ago and discussed their many concerns about parking. Since that time, they have made an agreement with the Christian Student Fellowship, which is located across the street from the subject properties, to use their parking for meetings and other events. Many of the fraternities and sororities, most of which have very limited parking areas, also use the free, available parking at the W.T. Young library on their meeting nights.

Mr. Simmons said, with regard to the concerns about enforcement of the activities at the proposed fraternity house, that the international headquarters of the fraternity is located in Lexington. For that reason, the local chapter members are self-policing and want to be an excellent example for their organization.

Mr. Simmons stated that the petitioner realizes that the proposed fraternity house does not fit with the typical idea of such a use, but those typical houses are becoming more difficult to fill with permanent residents. Therefore, the fraternity proposed to construct a much smaller house, that would still allow a few members to reside there. The fraternity chose to purchase their own property, rather than leasing a parcel from the University, because they did wish to give the University the ability to force the organization to move after having spent the funds to construct a house.

Citizen Support: Bill Lear, principal member of Touchstone Properties, stated that his company has owned the subject property for the last 10 years, during which time it has been used for student housing. He said that the property owner supports the proposed rezoning, and has entered into a contract to sell the subject properties to the fraternity.

Mr. Lear said that the proposed use of the subject properties for a fraternity house would actually be less intense than the existing single-family residences, with fewer bedrooms and less square footage. He noted that, within the

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400' notification area, all of the properties are either owned by the University or used for student housing. Mr. Lear contends that the subject properties provide the best location for a fraternity house that does not with to actually locate on campus. He said that he supports this request, and requested approval.

Citizen Opposition: Janet Cowan, 612 Columbia Avenue, stated that she does not support the proposed rezoning on the subject properties, because she believes that the University of Kentucky infringes on the surrounding residential neighborhood each time a single-family house is torn down on Columbia Avenue. The area residents are concerned that, once the existing residences on the subject properties are removed, the house on an adjacent property on Columbia Avenue will be removed as well. Since there are two vacant lots nearby, the residents are concerned that those lots could be used to construct additional student housing.

With regard to the activities at the proposed fraternity house, Ms. Cowan stated that the Christian Student Fellowship, located across the street from the subject properties, recently held an event that resulted in several residents calling both the University and Lexington police. She noted that students also frequently park in the front yard of the Christian Student Fellowship facility.

Ms. Cowan said that neighborhood residents are also concerned about the possibility of additional traffic generated by the proposed fraternity. She stated that the Columbia/Woodland Avenue intersection is already extremely congested, and allowing an access point close to the intersection could exacerbate the situation.

Ms. Cowan stated that she did not care about the loss of the house that faces Woodland Avenue, but she is concerned about the removal of the residence that faces Columbia Avenue, as it is part of her neighborhood. The Columbia Avenue neighborhood is historic, and was proposed for H-1 zoning a few years ago. She noted that the Planning Commission members will not be affected by the noise, lights, parties, etc., that could take place on the subject properties, but she asked that the members consider the effects of the proposed use on the surrounding neighborhood, and reiterated that she opposes the proposed rezoning.

Mark Barker, 439 Park Avenue, stated that he is opposed to the proposed rezoning because he does not believe the Columbia/Woodland Avenue area can support the additional density, stormwater runoff, traffic, or on-street parking.

Mr. Barker said that he does not believe that the proposed fraternity house would be limited to only four residents, when the organization has 60 members. He also does not see the need for a study lodge, since the property is located directly across from the W.T. Young library.

Mr. Barker stated that he does not believe that the proposed fraternity house will be compatible with the existing residential uses, and noted a general agreement that it is more appropriate to locate such uses in designated Greek organization areas. Mr. Barker noted that, if the Commission chooses to approve this rezoning request, the result would be the first fraternity house located off campus in this area. Area residents are concerned about the inability of the UK police to enforce activities at the house, if it is located off campus. Mr. Barker said that he believes the fraternity should be required to use the property that it was offered by the University on campus.

Mr. Barker concluded by requesting that the Commission disapprove this request. If they should choose to approve it, he asked that they require: 1) that the occupancy of the fraternity house be limited to four residents; 2) that the building not exceed the current FAR limit of 35; 3) that a 6' green buffer be required between the rear parking lot and the adjacent Columbia Avenue residents.

Joshua England, a representative of the Christian Student Fellowship, stated that his organization is concerned about parking in the area. He said that he was unaware of a parking agreement with the fraternity, and noted that his organization currently has an agreement with the nearby child care center to allow extra parking for their events. Mr. England asked that the Commission consider the parking issues during their deliberation of the proposed rezoning.

Ted Cowan, 612 Columbia Avenue, stated the he believes that the proposed fraternity house will be an attractive building, but he is concerned about allowing the first such use to locate on the east side of Woodland Avenue. He is also concerned about the rezoning of the subject properties to R-3, which could possibly set a precedent for other properties in the area and allow a significant increase in residential density in the neighborhood.

Mr. Cowan asked that the Commission disapprove the proposed rezoning to R-3, or, should they choose to approve it, to add a condition to require that the fraternity house be alcohol-free. He noted that the fraternity entered into an agreement with the family of a member who succumbed to alcohol poisoning in 1997 that all of its chapters would be alcohol-free. Despite that agreement, the fraternity's website states that chapters can request an exemption to the alcohol-free policy, and 30% of its chapters have done so. Mr. Cowan noted that, since the University maintains an alcohol-free policy, the fraternity should be required to do so as well.

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Petitioner Rebuttal: Mr. Simmons stated, with regard to the concerns about stormwater runoff, that part of the LEED Platinum certification process requires that the parking area be constructed with pervious pavers. That configuration would result in all of the runoff being collected in a cistern underground, and used to reduce the amount of potable water used on the property.

With regard to the concerns about R-3 zoning, Mr. Simmons said that the proposed floor plan meets all of the requirements for the R-3 zone, including the floor area ratio, so the proposed fraternity house would not be violating any zoning or landscape buffer requirements. Based on their conversations with staff, the petitioner understands that, should the Commission choose to grant the variance request, all aspects of the proposed development will meet with the staff's approval.

Mr. Simmons stated that the international fraternity does have an alcohol-free exemption policy, but the local chapter chooses not to participate in it, and to remain alcohol-free. He noted that all of the fraternity and sorority houses at the University of Kentucky, whether they are located on or off campus, are required to be alcohol-free.

With regard to the neighbors' concerns about the use of the proposed building and the policing of behavior, Mr. Simmons stated that the fraternity prides itself on scholarship, and that focus on scholarship will be the primary purpose of the new house.

Mr. Simmons stated that he had been informed that the fraternity had contacted Brian Marshall, of the Christian Student Fellowship, and had reached an agreement with regard to the parking arrangements.

Citizen Rebuttal: Mr. Barker stated that he does not believe that the proposed development can be considered "green," since it will eliminate two buildings and three large trees. He reiterated that he believes that there are older homes in the College Town area that could be renovated to serve the fraternity's needs.

Staff Rebuttal: Ms. Wade said, with regard to Ms. Cowan's comments, that the properties in this block of Columbia Avenue were not considered for H-1 zoning at the time of that request a few years ago.

Ms. Wade stated that condition #3 for the conditional use request reads: "The use of this facility should be as described in the applicant's MAR application, received on October 14, 2010, and with a focus on scholarship activities, group studies, tutoring, and pledge education." She noted that, if the Commission wishes, they could add, "and limited to four on-site residents," as long as the conditional use for a fraternity is in place.

Commission Questions: Mr. Owens asked if the staff could speak to the concerns about setting a precedent for R-3 zoning. Ms. Wade responded that one of the staff's findings for approval of the conditional zoning restriction discusses the proposed use of a fraternity house, and the fraternity house use being appropriate due to its adjacency to the UK campus. She noted that the R-3 zone could also be found to be in agreement with the Comprehensive Plan recommendations; and that, given individual development plan conditions, the R-3 zone could be found to be appropriate further into the nearby residential area. The staff does understand the neighborhood residents' concerns, but the staff evaluates any requested R-3 zoning based on the density recommended by the Comprehensive Plan and proposed by the applicant.

Citizen Rebuttal: Ms. Cowan stated that she was referring to a proposed rezoning to H-1 12 years ago, not the most recent attempt to rezone properties along Columbia Avenue to H-1.

*Note: Ms. Roche-Phillips left the meeting at this time.*

Mr. Wilson asked what types of "other gatherings" would be held at the proposed fraternity house. Mr. Simmons answered that the facility would be used for parents' weekends, meet and greets, recruitment events, pledge meetings, cookouts, and graduate weekends. He noted that all of those activities would be alcohol-free.

Zoning Motion: A motion was made by Mr. Paulsen, and seconded by Mr. Brewer, to approve MARCV 2010-12, for the reasons provided by staff, including the conditional zoning restrictions as recommended by staff.

Discussion of Motion: Mr. Owens stated that he believes that a lot of the neighbors' concerns center around "Animal House" impressions of fraternity houses in general. He noted that he had participated in revocation hearings as part of the Board of Adjustment, and he would hope that that would never happen for this proposed conditional use. Mr. Owens added that the site is small, but he believes that the project is approvable.

Zoning Action: Mr. Paulsen's motion carried, 8-0. (Copeland, Holmes, and Roche-Phillips absent.)

Conditional Use and Variance Action: A motion was made by Mr. Paulsen, seconded by Mr. Brewer, and carried 8-0 (Copeland, Holmes, and Roche-Phillips absent) to approve the requested conditional use and variance, adding a limit of four persons in the residence to condition #3 for approval of the conditional use.



Development Plan Motion: A motion was made by Mr. Paulsen, seconded by Ms. Beatty, to approve ZDP 2010-63, subject to the eight conditions as listed in the revised staff recommendation.

Discussion of Motion: Mr. Owens asked if condition #8 should be deleted based on the approval of the variance. Mr. Martin answered that that was correct.

Development Plan Action: Mr. Paulsen amended his motion to delete condition #8, which was seconded by Ms. Beatty. Mr. Paulsen's motion carried, 8-0 (Copeland, Holmes, and Roche-Phillips absent).

## VI. COMMISSION ITEMS

- A. ANNUAL REPORT FOR THE COURTHOUSE AREA** – Billy Van Pelt, Design Review Officer for the Courthouse Area Design Review Board, stated that the Ordinance requires that the CHADRB present a report each year to the Planning Commission and the Council. He distributed copies of his prepared presentation to the Commission members.

Mr. Van Pelt said that the CHADRB Ordinance was established in 2001, and it covers 90 parcels, for a total of 24 acres, in the downtown core area. The Board meets quarterly, or on an as-needed basis, to review proposed projects in the Courthouse Area. The Board's membership is made up of a cross-section of the community, as mandated by the Ordinance. Mr. Van Pelt stated that, in 2010, the CHADRB approved 12 projects, with seven approvals made by the Board, and five staff-level approvals. To date, the Board has approved a total of 67 projects: 41 Board approvals, and 26 staff-level. Mr. Van Pelt displayed several photographs of the projects that were implemented during 2010.

With regard to the Ordinance requirements, Mr. Van Pelt said that he is required to provide updates on the Goals and Objectives of the Courthouse Area Plan to the Planning Commission each year. He stated that he is currently serving on the Form Based Codes and Design Guidelines Task Force; and that, should that body choose to adopt form based codes, it could affect the CHADRB review process. Mr. Van Pelt also noted that he is required to provide a financial statement for the CHADRB each year, and explained that the only revenue that the Board receives is to pay for copies related to open records requests.

- B. RESOLUTIONS FOR FORMER PLANNING COMMISSION MEMBERS** – Chairwoman Richardson stated that, at this time, the Commission and the staff would like to take an opportunity to honor Frank Penn and Joan Whitman for their dedication and service to the Planning Commission and the Lexington-Fayette County community. Mr. Penn and Ms. Whitman joined Ms. Richardson and the other Commission members at the podium, where Ms. Richardson read the resolutions for them, copies of which are attached to the minutes of this meeting. Ms. Richardson stated that it had been a pleasure to serve on the Planning Commission with Mr. Penn and Ms. Whitman, and thanked them for their years of service.

Mr. Penn thanked the Commission members, and said that it was he who would like to thank them. He stated that having the opportunity to serve on the Planning Commission and make a difference in the community he loves was a high honor and a special privilege.

## VII. STAFF ITEMS

- A. PLAN 2010-115F: BLUEGRASS EXECUTIVE PARK, UNIT 1B, BLOCK F, LOTS 2 & 7 (AMD) (1/2/11)\* - located at 2241 Buena Vista Road and 2250 Thunderstick Drive. (Council District 6)** **(EA Partners)**

Note: The Planning Commission approved this Final Record Plat at their November 11, 2010 meeting, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm sewer, sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easement(s) as required by the utility companies and the Urban County Traffic Engineer.
7. Denote the computed floodplain elevations.
8. Denote the timing of the required tree installation on Lot 2 and the street tree installation on Lots 2 and 7.
9. No certification of this plan unless the Urban County Council rezones a portion of the property P-1; otherwise, any Commission action of approval is null and void.

Staff Report: Mr. Sallee presented a rendering of this final subdivision plat, noting that it was reviewed by the Subdivision Committee two weeks ago, and approved by the Planning Commission at their meeting last week. The property involves all of lots 2, 4, and 7 in the Bluegrass Executive Park, Unit 1-B. After the Commission's meeting last week, the applicant discussed with the staff some of the constraints they faced in attempting to acquire the subject property. It was for that reason that the staff agreed to bring this plat back before the Commission as a staff item.

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Mr. Sallee stated that the plat that the Commission approved last week was for lot 2, a revised lot 7, and a revised lot 4. Almost all of the property is zoned P-1, with the exception of the existing lot 7, which is in a B-5P zone. The applicant has an approved plat for three lots, but they need four parcels in order to permit the transfer of the property into one lot. Since the staff is not authorized to certify a plat that has more lots than the Commission approved, the applicant has revised their plat so that it now involves only lot 2, which is located at 2250 Thunderstick Drive. This plat would leave lots 7 and 4 intact, and permit the four parcels as desired.

Mr. Sallee referred to a rendering on the overhead projector, and noted that the applicant's intention is to acquire part of the existing lot 2, all of lot 7, and a portion of lot 4. The portion of lot 4 can be accomplished through a consolidation plat, which is a minor plat that the staff can approve. However, the applicant desires to subdivide lot 2 and create a new easement across Lot 2A to provide access to Lot 2B. The staff believes that the Commission will review a zone change for lot 7, possibly as early as December, which would further the applicant's intention to provide additional office space for the Social Security Administration, which is currently located adjacent to the subject properties. Given the applicant's desire to make this acquisition by the end of the year, and the fact that they need an additional parcel, the staff agreed to present this plat to the Commission as a staff item. Mr. Sallee referred to the revised list of subdivision plat conditions that had been provided to each Commission member, stating that the staff was currently recommending the following two alterations to the conditions that the Commission approved last week:

8. Denote the timing of the required tree installation on Lot 2 and the street tree installation on Lot 2 and 7.
9. ~~No certification of this plan unless the Urban County Council rezones a portion of the property P-1; otherwise, any Commission action of approval is null and void.~~

Mr. Sallee said that the staff is offering the following two findings:

- a. The Commission finds that the use of an access easement as the sole means of access to Lot 2B is appropriate (and necessary) in this instance due to the centralized location of the parcel within this block.
- b. The use of an access easement for the subdivision of Lot 2 will not be problematic, given its 30' width, and given that there are approved development plans for the entire property involved with this plat.

Mr. Sallee stated that the applicant should be filing a zone change soon for a portion of the property. Approval of this revised plat would allow the applicant to make their acquisitions and close on the properties by the end of the year, and the findings would allow the proposed access easement to serve Lot 2B through Lot 2A.

Commission Questions: Ms. Roche-Phillips asked Mr. Sallee to indicate the location of Lot 2 on the staff's rendering. Mr. Sallee did so, and noted that it is proposed to be subdivided into two lots. The remaining lot, which has the existing office building and parking, and what is currently a vacant lot that is anticipated to be combined with the other two properties. Ms. Roche-Phillips asked if it would be just a matter of time before that lot is reconsolidated into the larger portion of the property. Mr. Sallee responded affirmatively, and said that the plat that the Commission approved last week will be the way that the applicant ultimately plans to configure the property, once the parcel acquisitions are accomplished. Ms. Roche-Phillips asked if a waiver would be required in order to allow the access easement to serve as access for the new lot. Mr. Sallee answered that no waiver is necessary, just a finding by the Commission that the access easement is appropriate to allow the division of the rear portion of the lot without street frontage.

Applicant Representation: Rory Kahly, EA Partners, was present representing the applicant. He stated that the applicant is in agreement with the revised conditions, and requested approval.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Brewer, and carried 9-0 (Copeland and Holmes absent) to approve PLAN 2010-115F, subject to the revised conditions recommended by the staff.

**VIII. AUDIENCE ITEMS** – No such items were presented.

**IX. MEETING DATES FOR DECEMBER, 2010**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 2, 2010
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	December 2, 2010
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>December 9, 2010</b>
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	December 15, 2010
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>December 16, 2010</b>

**X. ADJOURNMENT** – There being no further business, Chairperson Richardson declared the meeting adjourned at 5:50 p.m.